

D'ARRIGO BROS. OF NEW YORK, INC.,

Case No.: 07 CV 3855 (HBJ)

Plaintiff,

-against-

ORDER

J&S PRODUCE INC.,

Defendant.

The plaintiff having moved for a preliminary injunction pursuant to F.R.Civ.P. 65 by the filing of the Order to Show Cause dated May 17, 2007, and upon the Affidavit of Paul D'Arrigo, dated May 14, 2007, with exhibits annexed thereto, the Certification of Leonard Kreinces, Esq., dated May 15, 2007, the accompanying Memorandum of Law, and the Court having held a hearing on plaintiff's motion on May 23, 2007 and Kreinces & Rosenberg, P.C., attorneys for the plaintiff having appeared in support of the motion and the defendant, J&S PRODUCE INC., having offered no opposition; and

IT APPEARING to the Court ~~from the Court~~ from the affidavit of Paul D'Arrigo, that the defendant is about to commit the acts hereinafter specified and that he ^{may} ~~will~~ do so unless restrained by order of this court, and ^{also} that immediate and irreparable injury, loss or damage will result to plaintiff, in the form of a loss of trust assets, it is therefore

ORDERED, that the motion for preliminary injunction is granted and, it is further

ORDERED, that defendant, J&S PRODUCE INC., its agents, officers, assigns, banking institutions and attorneys and all persons in active concert and participation with it be and they are:

(i) restrained from violating the provisions of the Perishable Agricultural

thereunder; and

(ii) restrained from, in anyway, directly or indirectly, in whole or in part, absolutely or as security, paying, withdrawing, transferring, assigning or selling any and all existing PACA trust assets and/or otherwise disposing of company or personal assets to any creditors, persons or entities until further order of this court or until the defendant, J&S PRODUCE INC. pays the plaintiff the sum of \$263,016.83 plus interest, costs, and attorneys fees, and

(iii) account to this Court and counsel for the plaintiff for the following items generated in defendant's business, to wit: any and all perishable agricultural commodities, inventories of food or other products derived from such perishable agricultural commodities, and any and all receivables or proceeds from such commodities and food or other products, which in any way have been distributed or disposed of, directly or indirectly, in whole or in part, absolutely or as security on or after October 12, 2006, with a description of the property involved, the recipient, the date and the purpose of the distribution; and

(iv) account to this Court and counsel for the plaintiff for all assets in defendant's ownership, possession, custody and/or control, or in the possession, custody and/or control of entities controlled by defendant, including the date of acquisition and whether or not such assets or any interest therein derived from the proceeds of the sale of perishable agricultural commodities by J&S PRODUCE INC., and, if not, the source of such assets; and

(v) to restore to the PACA trust any PACA trust assets derived directly or indirectly from J & S PRODUCE INC.'s operations and received or transferred by them on or after October 12, 2006, which are lawfully obtainable by J & S PRODUCE INC.; and

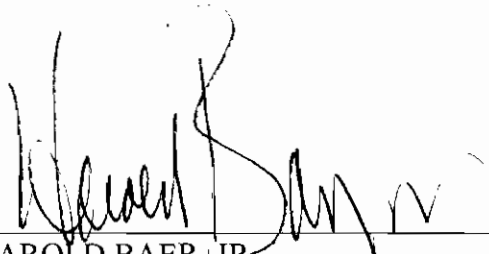
(vi) to segregate and escrow all proceeds from the sale of perishable agricultural commodities in a trust account to be designated "J&S DELIVERY INC. PACA Escrow Account" with plaintiff's counsel, Kreinces & Rosenberg, P.C., as escrow agent, depositing therein all cash assets of the PACA trust, no withdrawals to be made therefor pending further order of this Court; and it is further

ORDERED, that this Order will be binding upon the parties to this action, their officers, agents, servants, employees, banks, or attorneys and all other persons or entities who receive actual notice of this Order; and it is further

ORDERED, that the plaintiff shall not be required to post a bond hereunder.

3:15 This Order granting preliminary injunction is entered this 23rd of May, 2007 at _____ p.m.

Date: New York, New York
May 23, 2006



HAROLD BAER, JR.
United States District Judge